

---

**From:** Mitchell Klein <mjklein@polsinelli.com>  
**Sent:** Friday, July 27, 2012 9:30 PM  
**To:** Williams, Laurie  
**Cc:** Trombadore, Claire; 'Black, Ken'; Lucas Narducci; Rongone, Marie; Ripperda, Mark  
**Subject:** RE: Quivira Mine Site - EPA Response to Rio Algom's email dated 7-23-12

Laurie - Thank you for your response of July 24th. It was helpful in narrowing down some of the issues we are facing.

While we continue to disagree about the liability of KMNC as an operator at the Quivira Site, for negotiation purposes we will acknowledge that a basis exists to hold RAML liable for surficial contamination of the Red Water Pond Road (RWPR) and its shoulders. However, we have not seen evidence that any urgent situation exists that justifies the failure to undergo the remedial design process for the RWPR.

You have acknowledged that the destruction of the protective measures currently in place and excavation of the RWPR as called for in the Scope of Work may result in the immediate re-contamination of the East Drainage area. This clearly demonstrates that the Scope of Work for the RWPR sought by the EPA is improperly designed and inappropriate to the current situation.

We have had discussions with RAML management regarding these issues, and we expect to have a proposal for you sometime next week.

---

**From:** Laurie Williams [mailto:Williams.Laurie@epamail.epa.gov]  
**Sent:** Tuesday, July 24, 2012 5:49 PM  
**To:** Mitchell Klein  
**Cc:** Claire Trombadore; 'Black, Ken'; Lucas Narducci; Marie Rongone; Mark Ripperda  
**Subject:** Quivira Mine Site - EPA Response to Rio Algom's email dated 7-23-12

Mitch, Hi! Thank you for highlighting your concern about the issues of (1) the current risks at the Red Water Pond Road ("RWPR") Removal Area, and (2) the status of the Tronox funds EPA has received for actions at the Quivira Site. We appreciate the opportunity to provide you with additional information that may be helpful to your client in formulating a response.

**1. Risks to be Addressed:** As we have mentioned prior, EPA appreciates the initial efforts made by Rio Algom in 2010 to reduce the risks posed by RWPR and its shoulders, pursuant to our first AOC for the Quivira Site. We agree that chip sealing of the road and the application of tackifier to the shoulders in 2010 were helpful. Nevertheless, EPA does not agree that the endangerment from the road has been adequately addressed nor that it is inappropriate for EPA to require Rio Algom to address the current risks at this time.

As you may be aware, the average shallow concentration in the RWPR Removal Area is approximately 14.9 pCi/g and the high is 84 pCi/g. The concentrations along the shoulders and out towards the fenceline, 60 feet from the center of the road, are similar to concentrations in the road. The chip seal provided by Rio Algom only covers approximately 30 percent of the total RWPR Removal Area, leaving 70 percent uncovered. These uncovered areas are the portions of the RWPR Removal Area closest to the neighboring cleaned up areas. Unfortunately, the tackifier has had little visible long-term effect on stabilizing the soil and this area continues to erode. The chip seal will need maintenance and repair within the next few years. Excavating the soil will eliminate the need for repairs to the chip seal on the road. While EPA sought to have Rio Algom to create a cover for the road that would last 5 years, this did not create a limitation on EPA's ability to require additional action prior to that time. The risks of exposure on the shoulders remain significant. This is an area where people walk, children play and animals graze. The remaining risks in this area, despite the initial actions performed by Rio Algom, are more than adequate to justify EPA's requirement that a time critical removal action be performed this fall.

While precautions should be taken to limit the problem of spreading contamination during the RWPR removal action, it is certainly possible that some contamination will spread from the road and shoulders during cleanup and will then need to be addressed by Rio Algom. Areas on both sides of the road will have been cleaned and scanned to confirm compliance prior to the RWPR removal action.

Finally, since the action we are requiring Rio Algom to perform is a time-critical removal action, there is no requirement for a remedial action process to be followed under the NCP. The administrative process to finalize the documents we have provided to you will include review and signature by the appropriate delegated official but not a public comment period.

**2. Tronox Funds:** As you have noted, EPA has collected approximately \$1.2 million to date that may be applied to the Quivira cleanup. While the Tronox vs Anadarko fraudulent transfer litigation is continuing, there is no guarantee that this litigation will result in a recovery for the United States that can be applied to the Quivira Site. EPA will keep you informed of any change in this situation. With respect to the approximately \$1.2 million that has been collected from Tronox to date, more than \$1 million has been spent on activities related to the Quivira Site, including a residential removal of contaminated soil in proximity to the Quivira Site, EPA oversight and EPA contractor costs. As a result, we believe it is appropriate to require Rio Algom to perform response actions at the Site and to pay for EPA's costs related to those response actions. Attached please find EPA's draft unreconciled summaries for the costs incurred by EPA up through June 30, 2012, related to the Quivira Mine Site. Please note that the final reconciled amounts may be either higher or lower than the amounts shown in these summaries.

Please let us know if you have any additional questions or concerns.

Thank you for your consideration! Laurie (510) 390-4224 (cell)

Laurie Williams (ORC-3)  
Assistant Regional Counsel  
U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
Telephone: (415) 972-3867  
Facsimile: (415) 947-3570

-----Mitchell Klein <mjklein@polsinelli.com> wrote: -----

To: Laurie Williams/R9/USEPA/US@EPA  
From: Mitchell Klein <mjklein@polsinelli.com>  
Date: 07/23/2012 03:22PM  
Cc: "Black, Ken" <Ken.Black@bhpbilliton.com>, Lucas Narducci <LNarducci@Polsinelli.com>, Mark Ripperda/R9/USEPA/US@EPA, Marie Rongone/R9/USEPA/US@EPA, Claire Trombadore/R9/USEPA/US@EPA  
Subject: RE: Quivira Mine Site - Response to Rio Algom Correspondence re RWPR Removal Action Draft Documents

Thank you for your recent response. We have engaged in discussions with our client regarding your demands, and we will get you a reply as soon as possible.

I note that your response failed to address two critical issues.

First, the EPA has still not provided us with any basis for your claim that the RWPR presents an imminent and substantial danger. As set forth in my last letter, there is no evidence that such a danger exists, and your urgent demands appear based solely on expediency. Further, those remedial demands have not gone through any public or administrative process and are non-compliant with the NCP.

In prior discussions, you have claimed that the work you want done on the RWPR is needed to avoid the "re-contamination" of the East Drainage following UNC's work. Aside from the lack of technical evidence that any such threat exists, your demands raise an entirely new problem. It appears to us that excavating the RWPR as you demanded will *cause* contaminant exposure. It is difficult to imagine how the currently sealed and protected roadway could be torn up and completely excavated without releasing some amount of contamination. Since you are demanding that the excavation take place right after UNC has remediated the East Drainage, complying with your demand may result in the immediate "recontamination" of the East Drainage. Thus, compliance with your demand may cause the very problem you claim needs to be addressed. To the extent that RAML may comply with your demand, it will need formal assurance that RAML will not be liable for any future additional remedial measures at the East Drainage.

Second, as we all know, the EPA has already obtained over \$1.2 million dollars from the Tronox bankruptcy which must be used at the Quivira Site. This money results from Kerr-McGee's liability. Although we have requested it several times, you have never provided us an accounting of that money. Furthermore, the EPA is seeking enormous amounts of money

from Anadarko in a case presently being tried as a result of that same liability, and 2% of that recovery must be used at the Quivira site. Critically, the EPA's actions cut off RAML's ability to seek contribution from Kerr-McGee's successors, as the EPA claimed that it is the primary creditor for these environmental claims.

Since the EPA has obtained over a million dollars that must be used at the site, and is likely to obtain tens of millions more from cutting off RAML's rights for contribution, we do not believe that the EPA has any cost recovery claims against RAML, and is compelled to use the funds it has obtained, and will obtain in the future, prior to seeking anything from RAML.

In light of these circumstances, we will need this information to be presented in order to further our assessment. Please respond to these outstanding issues as soon as possible.

---

**From:** Laurie Williams [mailto:Williams.Laurie@epamail.epa.gov]

**Sent:** Friday, July 20, 2012 5:40 PM

**To:** Mitchell Klein

**Cc:** 'Black, Ken'; Lucas Narducci; Mark Ripperda; Marie Rongone; Claire Trombadore

**Subject:** Quivira Mine Site - Response to Rio Algom Correspondence re RWPR Removal Action Draft Documents

Mitch, Hi! Thanks for your July 16, 2012 correspondence in response to my July 13, 2012 email. As you have requested, I am of course willing to limit our discussions to written correspondence; however, please note that I remain available to speak with you by telephone if this would be helpful. We understand your concern about the short time frame we have allotted for any negotiations, but U.S. EPA continues to believe this time period is adequate to allow Rio Algom to plan for the relatively limited field work required to begin by October 1, 2012.

As noted in my prior email, the documents I provided to you on the evening of Friday, July 13, 2012, were drafts, intended to help inform your client's decision about whether to participate in an Administrative Order on Consent ("AOC") negotiation. EPA requests that you let us know by the end of the day this coming Tuesday, July 24, 2012, if your client is interested in pursuing an AOC for the work identified in the draft SOW.

Based on our prior negotiations with Luke Narducci and Anthony Merrill in 2010, I believe Rio Algom is aware of the history of the Quivira Mine Site as well as Rio Algom's responsibilities for the contamination associated with that Site. U.S. EPA believes the evidence is clear that Rio Algom Mining Corporation merged with the Quivira Mining Company in 2001, and that Rio Algom Mining LLC is the successor to the merged company. As a result, Rio Algom is a party that participated in operation of the Quivira Mine Site beginning in approximately 1974 and continuing through the end of the mining operations. While the lease for mining at the Site was not transferred from Kerr McGee Corporation to Quivira Mining Company until October 1983, the available documents indicate Kerr McGee Nuclear Corporation ("KMNC"), which changed its name to Quivira Mining Company in 1983, was an operator of the Site. Among other evidence, KMNC was the holder of the NPDES permit for the Quivira Mine Site's Churchrock #1 area, and submitted many reports to EPA Region 6 on that basis. In addition, in correspondence dated October 31, 1983, Mr. W.J. Shelley, a Kerr McGee Vice President, wrote to Mr. Oscar Cabra, at U.S. EPA Region 6, stating:

"Kerr McGee Nuclear Corporation's New Mexico uranium mining and milling operations have been consolidated into a new subsidiary,

"Quivira Mining Company." Operations under the new subsidiary will remain unchanged."

Further, you have raised the issue that Rio Algom did not "operate" Red Water Pond Road. As you know, a facility under CERCLA extends to where the contamination from the facility has "come to be located." In this case, as we have discussed, the evidence indicates that trucks from the Quivira Mine Site used the portion of Red Water Pond Road ("RWPR") that we are asking Rio Algom to clean up as a haul road for taking uranium ore to its mill. The portion of the road closest to the Quivira Mine entrance is generally the most highly contaminated and the levels of contamination generally

decrease as the road approaches its intersection with Highway 566. In addition, levels of contamination drop sharply as the road curves to the west, beyond the Quivira Mine entrance and away from Highway 566. This pattern is consistent with dust and spillage from Quivira Mine Company's hauling of uranium ore from the Mine Site to the company's mill. Further, sampling of the UNC Mine Site Step-Out areas indicates that contamination from UNC's NECR Mine Site generally recedes prior to reaching RWPR. Levels of contamination then go up again at sampling points closer to the road, indicating that the source of the contamination on the road and adjacent to it was primarily Quivira's use of the road for hauling uranium ore, rather than contamination from UNC's NECR Mine Site.

As noted in the proposed draft AOC, the available evidence appears to indicate that there are areas of commingled contamination that include uranium contamination from both the NECR Mine Site and the Quivira Mine Site, including (a) the NECR Mine Site Step Out Area No. 1, (b) RWPR and its shoulders, and (c) the Eastern Drainage Area. UNC/GE has cleaned up Step Out Area No. 1 and has made a commitment to clean up the Eastern Drainage Area beginning in early September, 2012. EPA Region 9 believes it is appropriate to require Rio Algom to excavate the contamination on and adjacent to RWPR beginning in October, 2012.

We look forward to any additional questions, concerns and suggestions you may have.

Thank you for your consideration.

Laurie

Laurie Williams (ORC-3)  
Assistant Regional Counsel  
U.S. EPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105  
Telephone: (415) 972-3867  
Facsimile: (415) 947-3570  
Cell: (510) 390-4224

From: Mitchell Klein <mjklein@polsinelli.com>

To: Laurie Williams/R9/USEPA/US@EPA, Harrison Karr/R9/USEPA/US@EPA, Claire Trombadore/R9/USEPA/US@EPA, Mark Ripperda/R9/USEPA/US@EPA

Cc: "Black, Ken" <Ken.Black@bhpbilliton.com>, Lucas Narducci <LNarducci@Polsinelli.com>

Date: 07/16/2012 04:01 PM

Subject: RAML response

---

[Please see the letter attached.](#)

---

This electronic mail message contains CONFIDENTIAL information which is (a) ATTORNEY - CLIENT PRIVILEGED COMMUNICATION, WORK PRODUCT, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee(s) named herein. If you are not an Addressee, or the person responsible for delivering this to an Addressee, you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this electronic mail message in error, please reply to the sender and take the steps necessary to delete the message completely from your computer system.

---

IRS CIRCULAR 230 DISCLOSURE: Unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written by Polsinelli Shughart PC (in California, Polsinelli Shughart LLP) to be used, and any such tax advice cannot be used, for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service.

This electronic mail message contains CONFIDENTIAL information which is (a) ATTORNEY - CLIENT PRIVILEGED COMMUNICATION, WORK PRODUCT, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee(s) named herein. If you are not an Addressee, or the person responsible for delivering this to an Addressee, you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this electronic mail message in error, please reply to the sender and take the steps necessary to delete the message completely from your computer system.

---

IRS CIRCULAR 230 DISCLOSURE: Unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written by Polsinelli Shughart PC (in California, Polsinelli Shughart LLP) to be used, and any such tax advice cannot be used, for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service.

This electronic mail message contains CONFIDENTIAL information which is (a) ATTORNEY - CLIENT PRIVILEGED COMMUNICATION, WORK PRODUCT, PROPRIETARY IN NATURE, OR OTHERWISE PROTECTED BY LAW FROM DISCLOSURE, and (b) intended only for the use of the Addressee(s) named herein. If you are not an Addressee, or the person responsible for delivering this to an Addressee, you are hereby notified that reading, copying, or distributing this message is prohibited. If you have received this electronic mail message in error, please reply to the sender and take the steps necessary to delete the message completely from your computer system.

---

IRS CIRCULAR 230 DISCLOSURE: Unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written by Polsinelli Shughart PC (in California, Polsinelli Shughart LLP) to be used, and any such tax advice cannot be used, for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service.